Supreme Court, U.S.
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No. 99-537

In The

Supreme Court of the United States

DONALD R. HILL, et al.,

Petitioners,

vs.

MACARTHUR RUMBLES,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENT MACARTHUR RUMBLES' BRIEF IN OPPOSITION

BILL ONG HING
Counsel of Record
SUSAN D. CHRISTIAN
Attorney for Respondent

KING HALL CIVIL RIGHTS CLINIC
University of California
School of Law
400 Mrak Hall Drive
Davis, California 95616-5201
(530) 759-8098

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QUESTION PRESENTED

Whether a state prisoner whose only cognizable remedy is monetary damages must exhaust internal prison grievance procedures where monetary damages are not available before filing a section 1983 action for monetary damages.

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent Macarthur Rumbles respectfully requests that this Court deny the Petition for a Writ of Certiorari (hereinafter "Petition" or "Pet.") seeking review of the decision of the Ninth Circuit Court of Appeals.

OPINION BELOW

The decision of the court of appeals is reported at 182 F.3d 1064 (9th Cir. 1999), and is reprinted in the Appendix to the Petition (hereinafter "Pet. App.") at pages 1a-15a.

STATEMENT OF THE CASE

Respondent Macarthur Rumbles is an African American inmate at the California Correctional Institution. In October 1996, K. Black, a white correctional officer, spit on respondent, called him racial epithets, and assaulted or threatened to assault him. Pet. App. 35a-37a. In his pro se complaint, respondent sought money damages, as well as injunctive-type relief in the form of a formal apology from the prison and a federal investigation into unspecified state laws that "are stiffer on repeat offenders and [the laws'] effect on the conduct of Correctional Officers." *Id.*, at 40a. The district court treated respondent's complaint as one for damages only because it was his "only legally or equitable (sic) recognizable remedy." *Id.*, at 24a. Respondent did not appeal the dismissal of his equitable claims. The court found that because California's inmate appeals process does not allow for money

damages, it is not an "available" remedy for purposes of PLRA exhaustion requirements. *Id.*, at 25a. The district court also found that Congress did not intend "to include state tort claims procedures . . . within the meaning of 'administrative remedy' as that phrase is used" in the PLRA. *Id.*, at 27a. Consequently, the court denied petitioners' motion to dismiss as to respondent's damages claims.

Petitioners subsequently filed an interlocutory appeal. The court of appeals found that because respondent's "only cognizable remedy" was a claim for damages, the "district court properly analyzed the action as one seeking only damages." *Id.*, at 7a. Following its prior decision in *Lunsford v. Jumao-As*, 155 F.3d 1178 (9th Cir. 1998), the court of appeals held that state prisoners are not required to exhaust administrative remedies under the PLRA if a prisoner's only remedy for his 42 U.S.C. section 1983 claim is an award of money damages and money damages are not available through the prison's administrative grievance process. *Id.*, at 12a. The Ninth Circuit also held that Congress' use of the term "administrative remedies" in 42 U.S.C. section 1997e(a) referred to prison grievance procedures and not state tort claims procedures. *Id.*, at 14a. Accordingly, the court of appeals affirmed the district court's order denying petitioners' motion to dismiss.

REASONS FOR DENYING THE PETITION

Petitioners assert the broad position that 42 U.S.C. § 1997e(a), as amended by the PLRA, requires prisoners

to exhaust administrative remedies before bringing a section 1983 claim for damages. However, upon closer review, it is apparent that the actual issue in the instant case is much more narrow. Properly analyzed, the precise issue petitioners wish to place before this Court is whether a state prisoner whose *only possible remedy for past conduct is monetary damages* must exhaust internal prison grievance procedures before filing a federal civil rights lawsuit where monetary damages are *not available* through the internal prison grievance procedures. Viewed in this light, petitioners' arguments that the court of appeal's holding is contrary to the plain language, legislative evolution, and goals of section 1997e(a), and that there is a pronounced circuit split, are unpersuasive.

The petition also seeks to overturn the court of appeal's holding that state tort claim procedures are not available administrative remedies that a prisoner must exhaust under 42 U.S.C. § 1997e(a) before filing a section 1983 action. This decision was grounded on careful analysis and well-established precedent which petitioners failed to show was intended by Congress to be changed. Accordingly, this issue does not merit review by this Court.

I. The Court of Appeals Decision Was Correct.

The court of appeals agreed with the district court that respondent's only cognizable remedy for the past incident of excessive force was money damages. The court held that because the California Department of Correction's ("CDC") inmate appeals process does not allow for money damage awards, respondent was not

required to exhaust that process as it did not provide an available remedy. This conclusion is entirely consistent with the plain language of section 1997e(a). As amended, section 1997e(a) provides that "[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983] . . . by a prisoner . . . until such administrative *remedies* as are *available* are exhausted." 42 U.S.C. § 1997e(a), emphasis added. The ordinary meaning of the term "available" is "obtainable, present or ready for immediate use." *Black's Law Dictionary* 135 (6th ed. 1990). The term "remedy" is defined as "the means by which . . . the violation of a right is . . . redressed or compensated." *Black's*, at 1294. Thus, if there is no possible redress or compensation, the process or "means" do not constitute a "remedy." Had Congress intended "administrative remedies" to mean administrative procedures or processes, regardless of the existence of a remedy available through that process, it would have included the term procedures or processes in the language of the statute; the statute would have expressly required prisoners to "exhaust all administrative procedures as are available." Clearly, Congress chose the words that it did, not by accident, but in furtherance of its goal of procedural efficiency in enacting the PLRA. By its plain language, the PLRA requires that prisoners exhaust only those procedures through which the relief sought for the violation of their rights is accessible, obtainable, or ready for immediate use.

Petitioners assert that "[t]here is nothing in the language [of section 1997e(a)] to support the lower court's view that exhaustion is mandatory only when administrative programs dispense monetary awards or grant

relief precisely congruent with the prisoner's desires." This characterization of the court of appeal's holding is incorrect. The court's holding was not based solely on the prisoner's wishes. Rather, it followed precedent where, as here, the only possible remedy for "past conduct" was money damages. Money damages, of course, were not "available." Contrary to petitioners' assertion above, the language of section 1997e(a) – the term "remedy" and the phrase "as are available" – clearly supports this conclusion.

Petitioners point to the PLRA's removal of former section 1997e(a)'s requirement that available administrative remedies be "plain, speedy, and effective" as indicative of Congress' desire to curb courts' examination of the effectiveness of administrative remedies. In this regard they cite the Seventh and Eleventh Circuit decisions which they argue create a split justifying certiorari. *Perez v. Wisconsin Dep't of Corrections*, 182 F.3d 532, 536 (7th Cir. 1999) ("when these words left the statute so did any warrant to inquire whether exhaustion would be *availing*," emphasis added. "Avail," as used here, is defined as "advantage toward attainment of a goal or purpose: USE," *Merriam Websters Collegiate Dictionary*, 79 (10th ed. 1997); *Alexander v. Hawk*, 159 F.3d 1321, 1326 (11th Cir. 1998) (removal of the words "indicates that Congress no longer wanted courts to examine the effectiveness of administrative remedies but rather to focus solely on whether an administrative remedy program is 'available' in the prison involved"). The Ninth Circuit does not disagree with these courts, that "availing" and "effective" do not mean "available," and Congress now wants courts to look at the latter only.

Whether an administrative remedy is "effective" (or "plain" and "speedy" for that matter) focuses on the extent or degree to which an existing remedy redresses or compensates for the violation of a right. By contrast, an administrative remedy is "available" if it simply *exists*, regardless of its adequacy or effectiveness. It is crucial that the PLRA left undisturbed the requirement that administrative remedies be "available."

Petitioners also contend that the Ninth Circuit's interpretation of "available remedies" is inconsistent with the congressional intent behind the PLRA. Petitioners cite legislative history which states that Congress intended to abrogate that portion of *McCarthy v. Madigan*, 503 U.S. 140 (1992), which held that an inmate need not exhaust available administrative remedies before bringing a *Bivens* action for monetary damages. Petitioners state that "[u]nopposed statements made during congressional floor debates reveal that § 1997e was amended in direct response to the Court's holding in *McCarthy* and reflect a purpose to require prisoners to exhaust all available administrative *procedures* before initiating federal claims damages." Petition, at 8, emphasis added. However, petitioners' use of the words "remedies" and "procedures" interchangeably is a sloppy approach where their main argument is the plain meaning of the statute. Clearly the words are not interchangeable and nothing in the legislative history suggests otherwise.

The Ninth Circuit also held that California Tort Claims Act procedures are not "available administrative remedies" that a prisoner must exhaust under section 1997e(a). The court of appeal's found that Congress did not intend to change the well-established principle that

exhaustion of state tort remedies is not required before bringing a section 1983 action. Petitioners' contention that this finding was "perfunctory and unsupported" is not correct. The court explicitly based its conclusion on well-settled precedent, including United States Supreme Court precedent, as well as an analysis of the language of the PLRA, the pre-PLRA version of section 1997e, and their legislative history. Petitioners' only support against this weight of authority and careful analysis is one quote from the PLRA's legislative history. It was petitioners' burden on appeal to show Congressional intent to change this well-established rule. *Green v. Bock Laundry Machine Co.*, 490 U.S. 504, 521 (1989). Their having failed to meet that burden placed no mandate upon the appellate court to reiterate a detailed explanation of all the precedent that remained unchanged.

In summary, the Ninth Circuit's decision was based upon well reasoned precedent, and the plain meaning of the statute. Therefore, this Court need not review that decision.

II. There Is No Direct Conflict Among The Circuits.

Without analyzing the relevant circuit court cases, petitioners and *amicus curiae* argue that there is a split of authority. However, a closer examination of these decisions reveals that there is no direct conflict among the circuits over the precise issues presented in this case.

The Ninth, Fifth, and Tenth Circuits have held that prisoners bringing section 1983 or *Bivens* claims for injuries due to past, not ongoing, conduct need not exhaust administrative remedies when their only possible relief is

monetary damages and no administrative procedures exist which afford such relief. *Rumbles v. Hill*, 182 F.3d 1064, 1068-69 (9th Cir. 1999); *Whitley v. Hunt*, 158 F.3d 882, 886-87 (5th Cir. 1998); *Garrett v. Hawk*, 127 F.3d 1263, 1266-67 (10th Cir. 1997). In each case, the court found that plaintiff sought, and his only possible remedy for past violations was money damages. In the Seventh, Eleventh, and Sixth Circuit cases, which petitioners maintain create the alleged split of authority, the holdings in these cases are based on facts critically different from those before the Ninth Circuit. *Perez v. Wisconsin Dep't of Corrections*, 182 F.3d 532 (7th Cir. 1999); *Alexander v. Hawk*, 159 F.3d 1321 (11th Cir. 1998); *Lavista v. Beeler*, 1999 WL 970372 (6th Cir. Oct. 26, 1999).

In *Perez*, the plaintiff sought damages for ongoing inadequate medical care. *Perez*, at 534. Plaintiff asked only for damages, but the court held that he was required to exhaust the administrative process even though it did not provide for damages. *Id.*, at 537-38. The *Perez* court premised this holding on the fact that because the plaintiff suffered from ongoing medical problems and his treatment remained deficient at the time of the litigation, the state could, and should provide him with some "remedy" other than damages. *Id.*, at 538. Notably, that court expressly distinguished its holding from the Ninth Circuit's in *Lunsford*, and stated, "[i]t is possible to imagine cases in which the harm is done and no further administrative action could supply any 'remedy.' " *Id.* The court explained:

> Suppose the prisoner breaks his leg and claims delay in setting the bone is cruel and unusual punishment. If the injury has healed by the time

> suit begins, nothing other than damages could be a "remedy," and if the administrative process cannot provide compensation then there is no administrative remedy to exhaust.

Id. Thus, the *Perez* court dealt with a situation quite different from that in *Rumbles, Whitley,* and *Garrett,* and limited its holding accordingly.

The plaintiff in *Alexander* brought a claim against prison officials claiming that their continuing enforcement of federal legislation restricting prisoners' access to magazines which are sexually explicit or feature nudity was violating his First Amendment rights. *Alexander,* at 1322. He sought an injunction, declaratory relief, and monetary damages. *Id.,* at 1322-23. The Eleventh Circuit held that the plaintiff must exhaust his mixed claim for monetary and injunctive relief through the prison grievance program before filing suit in federal court. *Id.,* at 1328. The court based this conclusion on several grounds. First, the court contrasted *Alexander,* where the plaintiff sought both monetary and injunctive relief, with *Garrett* and similar cases which involved claims for only monetary relief. *Id.,* at 1327. Second, the court reasoned that because the violation at issue was ongoing, the plaintiff may succeed in having the facility halt the infringing practice. *Id.* Finally, because the plaintiff was challenging the constitutionality of a regulation, the court stated that the correctional institution could create a record explaining its justifications for the regulation and its enforcement. *Id.,* at 1327-28. None of these points are applicable in *Rumbles, Whitley* and *Garrett.*

In *Lavista,* the plaintiff was a blind and wheelchair-bound inmate who brought a *Bivens* action alleging

denial of medical care, sexual harassment and sexual assault, destruction of personal property and retaliation while he was incarcerated. *Lavista*, at *1. Plaintiff sought, and needed, injunctive relief in addition to monetary damages. *Id.* The Sixth Circuit held that the plaintiff must exhaust his administrative remedies before filing a federal suit, even if the damages were not available through the administrative process. *Lavista*, at *2-3. Again, as in *Alexander*, the court of appeals necessarily limited its holding to mixed claims for injunctive and monetary relief. *Id.* The court elaborated that with such a mixed claim the plaintiff might obtain administrative review of policies and procedures concerning disabled prisoners; that there could be an "attempt to correct legitimate complaints, even though it will not pay damages." *Id.*, at *3.

The common thread running through these Seventh, Eleventh, and Sixth Circuit cases is that because the plaintiffs in those cases either complained of ongoing conduct and/or could obtain and use injunctive or declaratory relief, there was something that the administrative grievance process could do for them. Some of these opinions fail to discuss the difference between an "effective" or "adequate" remedy and an "available" one, or they improperly analyze section 1997e(a) as requiring exhaustion of available administrative remedy programs rather than specific available administrative remedies. However, they all ultimately conclude that it was rational to require exhaustion within the language of the statute because there were administrative remedies that were available and which provided relief, even if these remedies were not the inmate's preferred form of relief.

Respondent submits that the Ninth Circuit does not quarrel with this view; it simply was faced with a different factual scenario.

The plaintiffs in the Ninth, Fifth, and Tenth Circuit cases not only exclusively sought monetary damages, in each case a money damage award was the only form of relief which could provide a remedy for their injury. Simply put, there was nothing else the prison grievance process could do for them. Because their only possible remedy was not available, these circuits properly held that exhaustion was not required by the statute. There is no substantial point of conflict between the circuits because each circuit's holding and rationale were based on significant factual differences. Although the holdings in district courts will surely differ depending on whether the facts in each case indicate that the internal prison grievance process can provide a remedy, these courts do not lack guidance as *amicus curiae* asserts.

Finally, there is absolutely no dispute among the circuits that state tort claim procedures are not available administrative remedies that a prisoner must exhaust under section 1997e(a) before filing a section 1983 action, and petitioner does not contend otherwise. As mentioned above, this rule is supported by well-established precedent and does not warrant this Court's review.

CONCLUSION

In this case, respondent's only cognizable remedy for injuries he suffered from a past incident of excessive force

was monetary damages. Because the prison's administrative grievance procedures do not provide monetary damages, there is simply no way for the prison to redress the violation of respondent's constitutional rights. The court of appeals concluded that exhaustion is not required by section 1997e(a) because there are no "available" administrative remedies. This situation differs from one where a prisoner complains of ongoing conduct and/or could obtain injunctive or declaratory relief. Requiring exhaustion in spite of the plain language of the statute, even though it would be futile, would burden both the prisoner and the correctional institution. For these reasons, the Petition for a Writ of Certiorari must be denied.

Respectfully submitted,

BILL ONG HING
Counsel of Record
SUSAN D. CHRISTIAN
Attorneys for Respondent

KING HALL CIVIL RIGHTS CLINIC
University of California
School of Law
400 Mrak Hall Drive
Davis, California 95616-5201
(530) 752-5440

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